

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2454

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 8-807, Arizona Revised Statutes, is amended to
3 read:

8-807. CPS information: public record: use: confidentiality: violation: classification: definitions

A. CPS information shall be maintained by the department as required by federal law as a condition of the allocation of federal monies to this state. All exceptions for the public release of CPS information shall be construed as openly as possible under federal law.

B. ~~If there is a reasonable need for the CPS information,~~ The department, or a person who receives CPS information pursuant to this subsection, shall provide CPS information to a federal agency, a state agency, a tribal agency, a county or municipal agency, a ~~county attorney~~ LAW ENFORCEMENT AGENCY, A PROSECUTOR, AN ATTORNEY OR A DESIGNATED REPRESENTATIVE OF A CHILD VICTIM OF CRIME PURSUANT TO ARTICLE II, SECTION 2.1, CONSTITUTION OF ARIZONA, a school, a community service provider, a contract service provider or any other person that is providing services pursuant to this chapter:

1. To meet its duties to provide for the safety, permanency and well-being of a child, provide services to a parent, guardian or custodian or provide services to family members to strengthen the family pursuant to this chapter.

1 2. To enforce or prosecute any violation involving child abuse or
2 neglect, ~~including provision of the CPS information to a defendant after a~~
3 ~~criminal charge has been filed.~~

4 3. TO PROVIDE INFORMATION TO A DEFENDANT AFTER A CRIMINAL CHARGE HAS
5 BEEN FILED AS REQUESTED BY AN ORDER OF THE CRIMINAL COURT.

6 C. The department shall disclose CPS information to a court, a party
7 in a dependency or termination of parental rights proceeding or the party's
8 attorney, the foster care review board or a court appointed special advocate
9 for the purposes of and as prescribed in this title.

10 D. The department shall disclose CPS information to a domestic
11 relations, family or conciliation court if the CPS information is necessary
12 to promote the safety and well-being of children. The court shall notify the
13 parties that it has received the CPS information.

14 E. A person or agent of a person who is the subject of CPS information
15 shall have access to CPS information concerning that person.

16 F. The department:

17 1. May provide CPS information to confirm, clarify or correct
18 information concerning an allegation or actual instance of child abuse or
19 neglect that has been made public by sources outside the department.

20 ~~2. May provide and, on request, shall provide summary information~~
21 ~~regarding a fatality or near fatality caused by abuse or neglect.~~

22 2. SHALL PROMPTLY PROVIDE CPS INFORMATION TO THE PUBLIC, OR TO ANY
23 PERSON WHO REQUESTS ACCESS TO THIS INFORMATION, REGARDING A CASE OF CHILD
24 ABUSE OR NEGLECT THAT RESULTED IN A FATALITY OR NEAR FATALITY CAUSED BY
25 ABUSE, ABANDONMENT OR NEGLECT. THE DEPARTMENT SHALL PROMPTLY NOTIFY THE
26 COUNTY ATTORNEY OF ANY DECISION TO RELEASE CPS INFORMATION AND THE COUNTY
27 ATTORNEY SHALL PROMPTLY INFORM THE DEPARTMENT IF IT BELIEVES THAT RELEASE OF
28 THIS INFORMATION WOULD CAUSE A SPECIFIC, MATERIAL HARM TO A CRIMINAL
29 INVESTIGATION. THE DEPARTMENT SHALL PRODUCE AS MUCH INFORMATION ABOUT A
30 FATALITY OR NEAR FATALITY AS PROMPTLY AS POSSIBLE, AND ITS DUTY TO DISCLOSE
31 IS A CONTINUING DUTY.

1 3. May provide CPS information to a person who is conducting bona fide
2 research, the results of which might provide CPS information that is
3 beneficial in improving child protective services.

4 4. May provide access to CPS information to the parent, guardian or
5 custodian of a child if the CPS information is reasonably necessary to
6 promote the safety, permanency and well-being of the child.

7 G. Access to CPS information in the central registry shall be provided
8 as prescribed in section 8-804.

9 H. To provide oversight of child protective services, the department
10 shall provide access to CPS information to the following persons, if the CPS
11 information is reasonably necessary for the person to perform the person's
12 official duties:

- 13 1. Federal or state auditors.
14 2. Persons conducting any accreditation deemed necessary by the
15 department.

16 3. A standing committee of the legislature or a committee appointed by
17 the president of the senate or the speaker of the house of representatives
18 for purposes of conducting investigations related to the legislative
19 oversight of the department of economic security. This information shall not
20 be further disclosed UNLESS A COURT HAS ORDERED THE DISCLOSURE OF THIS
21 INFORMATION OR THE INFORMATION IS OTHERWISE IN THE PUBLIC DOMAIN.

22 4. A legislator who ~~is responsible for oversight of the enabling or~~
23 ~~appropriating legislation to carry out these functions~~ REQUESTS CPS
24 INFORMATION IN THE REGULAR COURSE OF THE LEGISLATOR'S DUTIES. This
25 information shall not be further disclosed UNLESS A COURT HAS ORDERED THE
26 DISCLOSURE OF THIS INFORMATION OR THE INFORMATION IS OTHERWISE IN THE PUBLIC
27 DOMAIN. To request a file pursuant to this paragraph:

28 (a) The legislator shall submit a written request for CPS information
29 to the presiding officer of the body of which the state legislator is a
30 member. The request shall state the name of the person whose case file is to
31 be reviewed and any other information that will assist the department in

1 locating the file. ~~The request shall also include the office of the~~
2 ~~department at which the legislator wants to review the file.~~

3 (b) The presiding officer shall forward the request to the department
4 within five working days of the receipt of the request.

5 (c) The department shall make the necessary arrangements for the
6 legislator to review the file at an office of the department, chosen by the
7 legislator, within ten working days.

8 (d) The legislator shall sign a form, CONSISTENT WITH THE REQUIREMENTS
9 OF THIS PARAGRAPH AND PARAGRAPH 3 OF THIS SUBSECTION, before reviewing the
10 file, that outlines the confidentiality laws governing child protective
11 services files and penalties for further release of the information.

12 5. A citizen review panel as prescribed by federal law, a child
13 fatality review team as provided in title 36, chapter 35 and the office of
14 ombudsman-citizen's aide.

15 ~~I. A person who is not specifically authorized by this section to~~
16 ~~obtain CPS information may petition a judge of the superior court to order~~
17 ~~the department to release that CPS information. The court shall balance the~~
18 ~~rights of the parties entitled to confidentiality pursuant to this section~~
19 ~~against the rights of the parties seeking release of the CPS information.~~
20 ~~The court may release otherwise confidential CPS information only if the~~
21 ~~rights of the parties seeking the CPS information and any benefits from~~
22 ~~releasing the CPS information sought outweigh the rights of the parties~~
23 ~~entitled to confidentiality and any harm that may result from releasing the~~
24 ~~CPS information sought.~~

25 I. A PERSON WHO HAS BEEN DENIED CPS INFORMATION REGARDING A FATALITY
26 OR NEAR FATALITY CAUSED BY ABUSE, ABANDONMENT OR NEGLECT PURSUANT TO
27 SUBSECTION F, PARAGRAPH 2 OR SUBSECTION K OF THIS SECTION MAY BRING A SPECIAL
28 ACTION PURSUANT TO SECTION 39-121.02 IN THE SUPERIOR COURT TO ORDER THE
29 DEPARTMENT TO RELEASE THAT CPS INFORMATION. THE PLAINTIFF SHALL PROVIDE
30 NOTICE TO THE COUNTY ATTORNEY, WHO HAS STANDING AND MAY PARTICIPATE IN THE
31 ACTION. THE COURT SHALL REVIEW THE REQUESTED RECORDS IN CAMERA AND ORDER

1 DISCLOSURE CONSISTENT WITH SUBSECTION A, SUBSECTION F, PARAGRAPH 2 AND
2 SUBSECTION K OF THIS SECTION. THE COURT SHALL TAKE REASONABLE STEPS TO
3 PROTECT THE PRIVACY AND DIGNITY OF CHILD VICTIMS OF CRIME.

4 J. THE DEPARTMENT OR A PERSON WHO IS NOT SPECIFICALLY AUTHORIZED BY
5 THIS SECTION TO OBTAIN CPS INFORMATION MAY PETITION A JUDGE OF THE SUPERIOR
6 COURT TO ORDER THE DEPARTMENT TO RELEASE CPS INFORMATION. THE PLAINTIFF
7 SHALL PROVIDE NOTICE TO THE COUNTY ATTORNEY, WHO HAS STANDING AND MAY
8 PARTICIPATE IN THE ACTION. THE COURT SHALL REVIEW THE REQUESTED RECORDS IN
9 CAMERA AND SHALL BALANCE THE RIGHTS OF THE PARTIES WHO ARE ENTITLED TO
10 CONFIDENTIALITY PURSUANT TO THIS SECTION AGAINST THE RIGHTS OF THE PARTIES
11 WHO ARE SEEKING THE RELEASE OF THE CPS INFORMATION. THE COURT MAY RELEASE
12 OTHERWISE CONFIDENTIAL CPS INFORMATION ONLY IF THE RIGHTS OF THE PARTIES
13 SEEKING THE CPS INFORMATION AND ANY BENEFITS FROM RELEASING THE CPS
14 INFORMATION OUTWEIGH THE RIGHTS OF THE PARTIES WHO ARE ENTITLED TO
15 CONFIDENTIALITY AND ANY HARM THAT MAY RESULT FROM RELEASING THE CPS
16 INFORMATION. THE COURT SHALL TAKE REASONABLE STEPS TO PROTECT THE PRIVACY
17 AND DIGNITY OF CHILD VICTIMS OF CRIME.

18 J. Except as provided in subsection ~~K~~ L of this section, before
19 it releases records under this section, the department shall take whatever
20 precautions it determines are reasonably necessary to protect the identity
21 and safety of a person who reports child abuse or neglect and to protect any
22 other person if the department believes that disclosure of the CPS
23 information would be likely to endanger the life or safety of ~~the~~ ANY person.
24 The department is not required by this section to disclose CPS information if
25 the DEPARTMENT DEMONSTRATES THAT disclosure would ~~compromise the integrity of~~
26 CAUSE A SPECIFIC, MATERIAL HARM TO a child protective services ~~or criminal~~
27 investigation. THE DEPARTMENT IS NOT REQUIRED BY THIS SECTION TO DISCLOSE
28 CPS INFORMATION IF, IN CONSULTATION WITH THE COUNTY ATTORNEY, THE COUNTY
29 ATTORNEY DEMONSTRATES THAT DISCLOSURE WOULD CAUSE A SPECIFIC, MATERIAL HARM
30 TO A CRIMINAL INVESTIGATION.

1 K. L. A person who is the subject of an unfounded report or complaint
2 made pursuant to this chapter and who believes that the report or complaint
3 was made in bad faith or with malicious intent may petition a judge of the
4 superior court to order the department to release the CPS information. The
5 petition shall specifically set forth reasons supporting the person's belief
6 that the report or complaint was made in bad faith or with malicious intent.
7 The court shall review the CPS information in camera and the person filing
8 the petition shall be allowed to present evidence in support of the petition.
9 If the court determines that there is a reasonable question of fact as to
10 whether the report or complaint was made in bad faith or with malicious
11 intent and that disclosure of the identity of the person making the report or
12 complaint would not be likely to endanger the life or safety of the person
13 making the report or complaint, it shall provide a copy of the CPS
14 information to the person filing the petition and the original CPS
15 information is subject to discovery in a subsequent civil action regarding
16 the making of the report or complaint.

17 L. M. The department shall provide the person who conducts a forensic
18 medical evaluation with any records the person requests, including social
19 history and family history regarding the child, the child's siblings and the
20 child's parents or guardians.

21 M. N. The department shall provide CPS information on request to a
22 prospective adoptive parent, foster parent or guardian, if the information
23 concerns a child the prospective adoptive parent, foster parent or guardian
24 seeks to adopt or provide care for.

25 N. O. If the department receives information that is confidential by
26 law, the department shall maintain the confidentiality of the information as
27 prescribed in the applicable law.

28 O. P. A person may authorize the release of CPS information about the
29 person but may not waive the confidentiality of CPS information concerning
30 any other person.

1 P. Q. The department may provide a summary of the outcome of a child
2 protective services investigation to the person who reported the suspected
3 child abuse or neglect.

4 Q. R. The department shall adopt rules to facilitate the
5 accessibility of CPS information.

6 R. S. The department may charge a fee for copying costs required to
7 prepare CPS information for release pursuant to this section.

8 S. T. A person who violates this section is guilty of a class 2
9 misdemeanor.

10 T. U. For the purposes of this section:

11 1. "CPS information" includes all information the department gathers
12 during the course of a child protective services investigation conducted
13 under this chapter from the time a file is opened and until it is closed.
14 CPS information does not include information that is contained in child
15 welfare agency licensing records.

16 2. "Near fatality" means an act that, as certified by a physician,
17 places a child in serious or critical condition."

18 Amend title to conform

JONATHAN PATON

2454jp1
02/21/2008
9:12 AM
C: jcs